

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	1:18CR489-1
	:	
v.	:	
	:	
ALBERTO BAHENA-BAHENA	:	FACTUAL BASIS

COMES NOW, the United States of America, by and through Matthew G.T. Martin, United States Attorney, and as a factual basis in support of the defendant's plea of guilty under Rule 11, Fed. R. Crim. P., states as follows:

Alberto BAHENA-BAHENA, a.k.a. Alberto Bahena Bahena, Alberto B Bahena, Alberto Bahena B. AND Eduardo Gamez, is a Mexican citizen by birth on November 21, 19XX (per his declarations). He is a two-time prior deport criminal alien (in addition to one voluntary return), and subject of Immigration A-file XXX-668-203, FBI Number XXX046HB5, State Identification Number NCXXX5874A, and USMS Registration Number XXX61-308.

On April 28, 1997, Bahena-Bahena was one of thirteen persons encountered by INS at/near Omaha, NE, determined to be unlawfully present in the United States, and voluntarily returned to Mexico, afoot, at the Paso Del Norte Bridge in El Paso, TX, the following day.

On December 27, 2012, he was one of five persons encountered by Border Patrol in Gila Bend, AZ, determined to be unlawfully present in the United States, and transported to the Wellton, AZ, Border Patrol Station where he was ordered removed from the United States by designated officials. He was convicted December 28, 2012, in the United States District Court for the District of Arizona, Yuma Division, for illegal entry, in violation of Title 8, United States Code, Section 1325(a)(1), and sentenced to time served. On December 28, 2012, agency form I-296 Notice to Alien Ordered Removed/Departure Verification was executed by including his fingerprint, photograph, and signature, and BAHENA-BAHENA was removed from the United States to Mexico, afoot, at Calexico, CA. He was advised prior to removal that he was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of his departure from the United States without the express consent of the Secretary of Homeland Security. He was further advised that doing so without the express consent of the Secretary of Homeland Security was a crime.

Bahena-Bahena was next encountered on January 21, 2014, by Border Patrol at/near Ajo, AZ. He was again determined to be unlawfully present in the United States, and transported to the Ajo, AZ, Border Patrol Station for processing. His order of removal was then reinstated by designated officials in

Why, AZ. He was convicted on January 22, 2014, in the United States District Court for the District of Arizona, Tucson Division, for illegal entry, in violation of Title 8, United States Code, Section 1325(a)(1), and sentenced to one hundred five (105) days of imprisonment. Thereafter on May 6, 2014, agency form I-205 Warrant of Removal/ Deportation was executed by including his photograph, fingerprint, and signature, and BAHENA-BAHENA was removed from the United States to Mexico, by foot, at Calexico, CA. He was advised prior to removal that he was prohibited from entering, attempting to enter, or being in the United States for a period of twenty years from the date of his departure from the United States without the express consent of the Secretary of Homeland Security. He was further advised that doing so without the express consent of the Secretary of Homeland Security was a crime.

Bahena-Bahena was arrested on September 29, 2018, in Rockingham County, NC, by North Carolina State Highway Patrol for driving while impaired, open container after consume alcohol first, no operator's license, reckless driving-wanton disregard, and drive left of center. He was transported to the Rockingham County, NC, Jail in Reidsville. From there officers submitted an Immigration Alien Query with BAHENA-BAHENA's arrest information to the ICE Law Enforcement Support Center (LESC). Based on the information provided, the LESC determined that the subject that they had

arrested appeared to relate to FBI number XXX046HB5, State Identification number NCXXX5874A, and Immigration A-file number XXX-668-203, and further stated that ICE records indicated that that subject was previously removed from the United States without record of legal re-entry. An ICE detainer was lodged against BAHENA-BAHENA with the Rockingham County Jail on September 30, 2018.

On October 19, 2018, ICE Officers interviewed and fingerprinted BAHENA-BAHENA at the Rockingham County, NC, Jail, in Reidsville where he was advised of his Miranda rights in a language which he understands (Spanish), which he waived in writing and made in part the following statement in response to questioning:

- a) that his true name is Alberto Bahena Bahena;
- b) that he was born November 21, 1972, in Guerrero, Mexico;
- c) that he is citizen of Mexico;
- d) that he has previously been deported; and
- e) that he has not applied to the Attorney General or the Department of Homeland Security for permission to re-enter the United States.

ICE Officers subsequently submitted BAHENA-BAHENA's fingerprints through Next Generation Identification (NGI), which is connected to the National Crime Information Center (NCIC), and the automated biometric identification system used by ICE termed IDENT. The fingerprint-based reports confirmed that he was the subject of FBI number XXX046HB5, State

Identification Number NCXXX5874A, and Immigration A-file number XXX-668-203.

On October 25, 2018, Department of Homeland Security's Biometric Support Center – West Latent Print Examiner L. Karel compared the known fingerprint impressions of BAHENA-BAHENA taken by ICE Officers on an FD-249 arrest tenprint card dated October 19, 2018, to NBINS FD-249 arrest tenprint card from A-file XXX-668-203 dated April 28, 1997; AZCBP FD-249 arrest tenprint card dated December 27, 2012; I-296 Notice to Alien Ordered Removed/ Departure Verification from A-file XXX-668-203 executed December 28, 2012, at Calexico, CA; AZCBP FD-249 arrest tenprint card dated January 21, 2014; and I-205 Warrant of Removal/ Deportation from A-file XXX-668-203 executed May 06, 2014, at Calexico, CA; and determined that the fingerprints were made by the same individual.

Bahena-Bahena was convicted on December 12, 2018, in Rockingham County, NC, District Court for driving while impaired, and sentenced to time served.

Deportation Officer North conducted record checks of immigration indices was unable to locate any record that Bahena-Bahena was granted permission by the Attorney General of the United States or the Secretary of

the Department of Homeland Security to apply for admission to the United States after deportation/removal.

This the 31st day of January, 2019.

Respectfully submitted,

MATTHEW G.T. MARTIN
United States Attorney

/S/ LISA B. BOGGS
Assistant United States Attorney
Senior Litigation Counsel
NCSB #10635
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401
Phone: (336) 333-5351
E-mail: lisa.boggs@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Cheryl D. Andrews, Esquire.

/S/ LISA B. BOGGS
Assistant United States Attorney
Senior Litigation Counsel
NCSB #10635
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Flr.
Greensboro, NC 27401
Phone: 336/333-5351